

1 BLOOD HURST & O'REARDON, LLP  
 2 TIMOTHY G. BLOOD (149343)  
 3 THOMAS J. O'REARDON II (247952)  
 4 PAULA M. ROACH (254142)  
 5 701 B Street, Suite 1700  
 6 San Diego, CA 92101  
 Tel: 619/338-1100  
 619/338-1101 (fax)  
 tblood@bholaw.com  
 toreardon@bholaw.com  
 proach@bholaw.com

7 MORGAN & MORGAN, P.C.  
 8 PETER SAFIRSTEIN  
 ROGER SACHAR  
 9 28 W. 44th Street, Suite 2001  
 New York, NY 10036  
 Tel: 212/564-1637  
 10 212/564-1807 (fax)  
 PSafirstein@MorganSecuritiesLaw.com  
 RSachar@MorganSecuritiesLaw.com

12 Attorneys for Plaintiffs and the Class

13 **UNITED STATES DISTRICT COURT**

14 **SOUTHERN DISTRICT OF CALIFORNIA**

15 ROBERT FRAGOSO, JASON  
 16 WILSON, SAMUEL  
 SEIDENBERG, JANELLE  
 17 ALBARELLO, and MICHAEL  
 COFFEY, on Behalf of Themselves  
 and All Others Similarly Situated,

18 Plaintiffs,

19 v.

20 BUMBLE BEE FOODS, LLC, TRI-  
 21 UNION SEAFOODS, LLC, and  
 STARKIST CO.,

22 Defendants.

Case No. **'15CV2072 DMS WVG**

**CLASS ACTION**

CLASS ACTION COMPLAINT

**DEMAND FOR JURY TRIAL**

## **CLASS ACTION COMPLAINT**

2 Plaintiffs, Robert Fragoso, Jason Wilson, Samuel Seidenberg, Janelle  
3 Albarello, and Michael Coffey, by and through their attorneys, bring this Class  
4 Action Complaint (“Complaint”) for indirect purchasers of packaged seafood  
5 products (“PSPs”) against Bumble Bee Foods, LLC, Tri-Union Seafoods, LLC,  
6 and StarKist Co. (collectively, “Defendants”). These Defendants are the three  
7 largest domestic manufacturers of PSPs, and conspired to, and did, fix, raise,  
8 maintain, and/or stabilize prices for PSPs in contravention of federal and state  
9 law beginning in the summer of 2011, and continuing to the present. Plaintiffs  
10 seek redress for themselves and those similarly situated.

## **NATURE OF THE ACTION**

12        1. This putative class action alleges that Defendants agreed, combined,  
13 and/or conspired among themselves to raise, inflate, maintain, and/or stabilize  
14 the price of PSPs from at least July 2011 to the present. Because Defendants are  
15 horizontal competitors, their conspiracy is a *per se* violation of Section 1 of the  
16 Sherman Act of 1890, 15 U.S.C. § 1 (“Sherman Act”) and violates the applicable  
17 state laws referenced herein.

## JURISDICTION AND VENUE

19        2. Plaintiffs bring this action under Section 16 of the Clayton Act, 15  
20 U.S.C. § 26, to obtain equitable and injunctive relief for violations of Section 1  
21 of the Sherman Act (15 U.S.C. § 1). This Court has subject matter jurisdiction  
22 under 28 U.S.C. § 1331 for claims that arise under federal law and under 28  
23 U.S.C. § 1337 for federal antitrust claims in particular. Plaintiffs also assert  
24 claims for damages, to seek restitution, and secure other relief, under state  
25 antitrust and other consumer protection laws.

26       3.     This Court additionally has subject matter jurisdiction over these  
27 state law claims under 28 U.S.C. § 1337 because those claims are so related to  
28 the federal claim that they form part of the same case or controversy.

1       4. This Court further has subject matter jurisdiction over the state law  
2 claims by virtue of the Class Action Fairness Act of 2005 (“CAFA”), which  
3 amended 28 U.S.C. § 1332 to add a new subsection (d) conferring federal  
4 jurisdiction over class actions where, “any member of a class of Plaintiffs are  
5 citizens of states different from any Defendant and the aggregated amount in  
6 controversy exceeds \$5,000,000, exclusive of interest and costs.” The \$5 million  
7 amount-in-controversy and diverse-citizenship requirements of CAFA are  
8 satisfied in this case.

9       5. Under 15 U.S.C. §§ 15(a) and 22 and 28 U.S.C. § 1391(b), (c) and  
10 (d), this District has venue over the action, for Defendants resided, transacted  
11 business, were found, and/or had agents in this District, and this District was the  
12 situs of a substantial portion of the affected interstate trade and commerce  
13 discussed herein during the Class Period.

14       6. Each Defendant is subject to personal jurisdiction before this Court  
15 because, among other reasons, each of them (a) transacted business, (b) sold  
16 and/or distributed PSPs, (c) maintained substantial contacts, and/or (d) engaged  
17 in an illegal and anticompetitive concerted action with respect to PSPs  
18 throughout the United States and in this District in particular. The jointly agreed  
19 upon scheme had the intended effect of injuring persons residing in, located in,  
20 or doing business throughout the United States, including in this District. By  
21 artificially establishing supra-competitive prices, the scheme restrained trade  
22 unreasonably and negatively affected the market for PSPs, harming persons  
23 throughout the United States and this District who purchased PSPs for personal  
24 use and not for resale, including Plaintiffs and members of the Classes.

25                   **INTERSTATE TRADE AND COMMERCE**

26       7. Defendants’ activities, as described herein, were within the flow of  
27 and had a substantial effect on, the interstate commerce of the United States,  
28 including in this District, as Defendants intended.

8. Defendants produced and sold PSPs in an uninterrupted and continuous flow of interstate commerce among the United States and its territories. Defendants' anticompetitive scheme consequently inflicted a direct, substantial, and reasonably foreseeable effect on interstate commerce.

## **PARTIES AND OTHER ACTORS**

9. Plaintiff Robert Fragoso is a current resident of Arizona. During the Class Period, Plaintiff Fragoso indirectly purchased PSPs in Arizona for his own use and not for resale from one or more of the Defendants and has suffered pecuniary injury as a result of the antitrust violations alleged herein.

10. Plaintiff Jason Wilson is a current resident of Michigan. During the Class Period, Plaintiff Wilson indirectly purchased PSPs in Michigan for his own use and not for resale from one or more of the Defendants and has suffered pecuniary injury as a result of the antitrust violations alleged herein.

11. Plaintiff Samuel Seidenberg is a current resident of New York. During the Class Period, Plaintiff Wilson indirectly purchased PSPs in New York for his own use and not for resale from one or more of the Defendants and has suffered pecuniary injury as a result of the antitrust violations alleged herein.

12. Plaintiff Janelle Albarello is a current resident of Hawaii. During the Class Period, Plaintiff Albarello indirectly purchased PSPs in Hawaii for her own use and not for resale from one or more of the Defendants and has suffered pecuniary injury as a result of the antitrust violations alleged herein.

13. Plaintiff Michael Coffey is a current resident of Florida. During the Class Period, Plaintiff indirectly purchased PSPs in California and Florida for his own use and not for resale from one or more of the Defendants and has suffered pecuniary injury as a result of the antitrust violations alleged herein.

1        14. Defendant Bumble Bees Foods, LLC (“Bumble Bee”) is a domestic  
2 corporation with its principal place of business located at 280 10th Avenue, San  
3 Diego, CA 92101. Bumble Bee produces and sells PSPs throughout the United  
4 States, (including in this District), its territories and the District of Columbia.  
5 Bumble Bee is privately owned by Lion Capital, a United Kingdom-based  
6 company.

7        15. Defendant Tri-Union Seafoods, LLC (“Tri-Union Seafoods”) is a  
8 domestic corporation with its principal place of business located at 9330  
9 Scranton Road, Suite 500, San Diego CA 92121. Tri-Union Seafoods produces  
10 and sells PSPs throughout the United States (including this District), its  
11 territories, and the District of Columbia. Tri-Union Seafoods markets its product  
12 under the brand name Chicken of the Sea (hereinafter referred to as “CoS”). CoS  
13 is owned by Thai Union Frozen Product (“TUF”), a Thailand-based company.

14        16. Defendant StarKist Co. ("StarKist") is a domestic corporation with  
15 its headquarters at 225 North Shore Drive, Suite 400, Pittsburgh PA 15212.  
16 StarKist produces and sells PSPs throughout the United States, (including in this  
17 District), its territories and the District of Columbia. StarKist is privately owned  
18 by Dongwon Enterprises, a South Korean-based company.

## **CO-CONSPIRATORS AND AGENTS**

20        17. The acts taken by Defendants, as alleged herein, were authorized,  
21 ordered, and condoned by their respective parent companies and authorized  
22 ordered and performed by their officers, directors, agents, employees, or  
23 representatives while engaged in the management, direction, control or  
24 transaction of their business affairs.

25        18. Various other persons, corporation, or firms not named herein as  
26 Defendants have participated in the violations alleged herein and may have  
27 performed acts and made statements in furtherance thereof.

## **FACTUAL ALLEGATIONS**

19. PSPs are a multi-billion dollar industry. According to a Bumble Bee presentation, total United State retail sales of shelf-stable seafood were \$2.346 billion in 2011. Bumble Bee's reported estimated that canned tuna represented 73% of the sales of shelf-stable seafood, comprising \$1.719 billion in 2011.

20. Canned tuna is typically comprised of skipjack tuna, as opposed to more expansive tuna types, such as Toro or Bluefin.

21. Bumble Bee, CoS and StarKist are the three largest domestic manufacturers of PSPs, and the industry exhibits high degrees of concentration. According to the *Washington Post*, Chicken of the Sea and Bumble Bee account for approximately 38% of U.S. canned tuna sales, while StarKist comprises 36%.<sup>1</sup>

22. Since a peak in the mid-1980s, sales of PSPs, including canned tuna, have been steadily declining. This is attributable to a number of factors, ranging from fears of dolphins being caught in tuna nets, to fears of mercury poisoning, to consumer preferences for fresh caught seafood. A *Washington Post* article graphically represented the decline in domestic consumer consumption:<sup>2</sup>

111

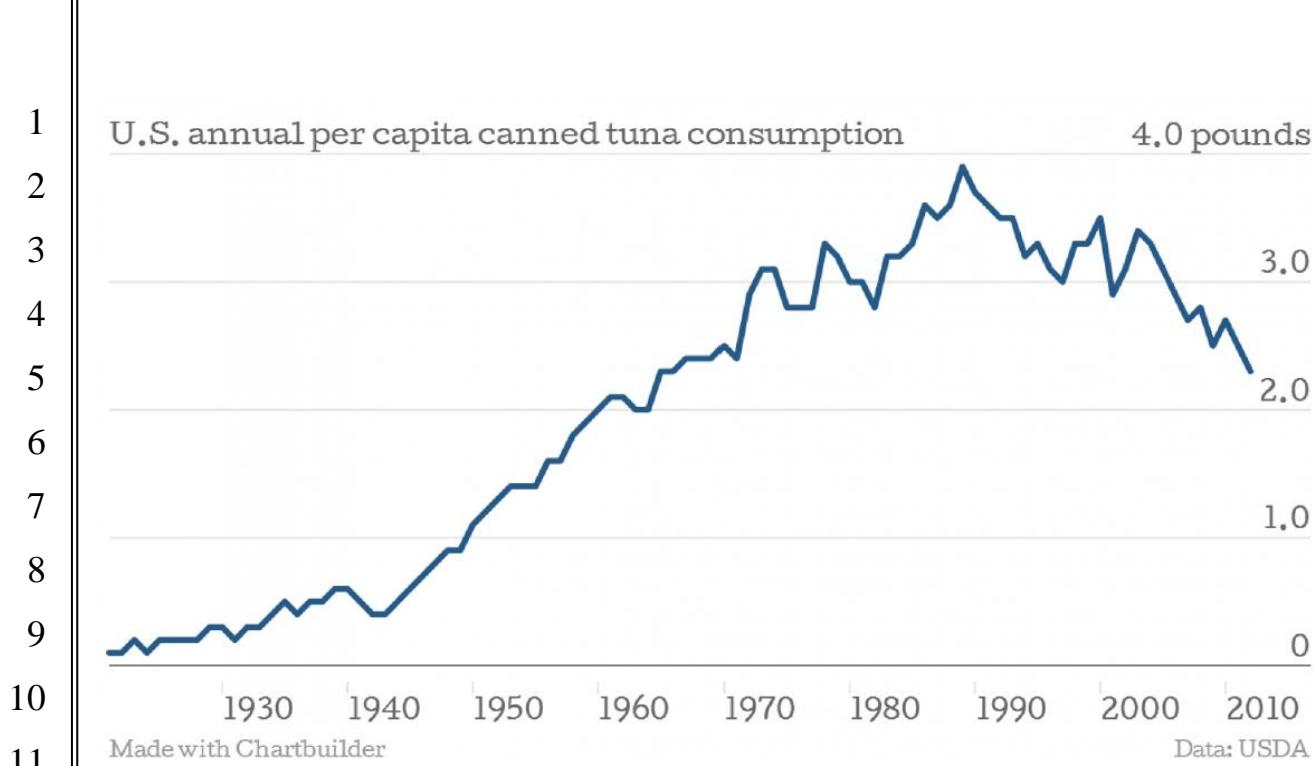
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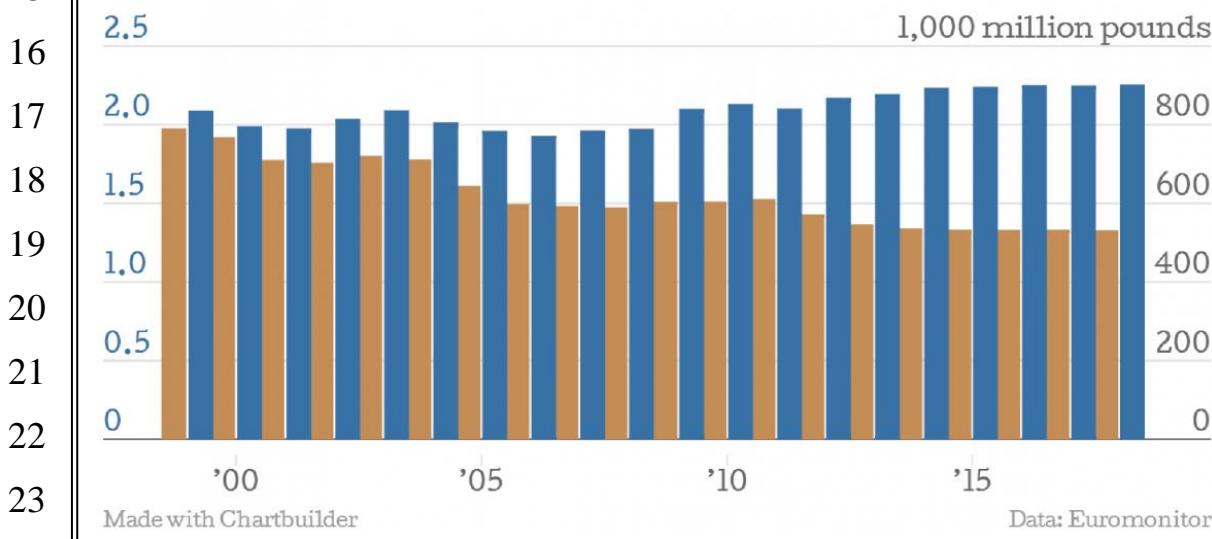
<sup>1</sup> Roberto A. Ferdman, *The world's biggest canned tuna company is about to get a lot bigger*, Wash. Post, Dec. 19, 2014, <http://www.washingtonpost.com/news/wonkblog/wp/2014/12/19/the-worlds-biggest-canned-tuna-company-is-about-to-get-a-lot-bigger/>

<sup>2</sup> Roberto A. Ferdman, *How America fell out of love with canned tuna*, Wash. Post, Aug. 18, 2014, <http://www.washingtonpost.com/news/wonkblog/wp/2014/08/18/how-america-fell-out-of-love-with-canned-tuna/>



23. Yet, while the amount of PSPs consumed has declined, the price of PSPs has increased steadily. According to the same *Washington Post* article:

Americans are buying less, but more expensive canned seafood  
■ Volume sales ■ Dollar sales



24. Normally, one would expect a decline in consumption of canned tuna and PSPs to trigger a reduction in prices for PSPs. However, because the Defendants controlled the PSP market, and conspired with one another to restrict

1 capacity, allocate customers, and to fix the price of PSPs, PSPs continued to be  
2 priced at artificially high levels throughout the Class Period.

3 25. Between 2005 and the beginning of 2015, the average price for  
4 canned tuna has increased roughly 50%, despite the decline in demand.

5 26. The increase in prices is not attributable to increased raw material  
6 costs. Indeed, according to the United Nations Food & Agriculture  
7 Organization's May 2015 "Food Outlook" biannual report, in 2014, that basic  
8 "tuna prices declined significantly due to excess supply, with frozen skipjack  
9 prices hitting a 6-year low." Despite the decline in the price of tuna supplies,  
10 canned tuna prices have increased.

11 27. Defendant TUF, as a public traded company, has explained its  
12 ability to increase prices despite declining demand. In its 2013 Annual Report,  
13 TUF informed investors that "our branded tuna business showed resilient growth  
14 from 2012 thanks to the price adjustments in Europe and *more rational market*  
15 *competition in the US.*" A year later, TUF's Annual Report noted that:

16 *Thanks to reduced price competition (absence of cut throat pricing)*  
17 and generally lower fish costs, our own tuna brands marked a great  
18 year of increased profitability. Despite minimal sales growth in the  
19 US, competitive inventory cost and reasonable market conditions  
helped lift the margin of our US brand.

20 28. Repeatedly, TUF's 2014 annual report emphasized that growth of its  
21 canned tuna division was dependent upon the continuation of "sensible market  
22 competition," and "[r]easonable US canned tuna competition." These types of  
23 descriptions are the hallmarks of collusion among allies; not the healthy robust  
24 competition of rivals.

25 29. There exist numerous opportunities for collusion among the  
26 Defendants. Each of the Defendants is a member of the National Fisheries  
27 Institute's Tuna council, and each of the Defendants co-operated in the "Tuna the  
28 Wonderfish" campaign in 2011 and 2012.

1       30. Bumble Bee and CoS also cooperate through co-packing  
2 agreements. On the East Coast, the rivals co-pack canned tuna at a plant in  
3 Georgia owned by CoS, while on the West Coast the rivals co-pack tuna at a  
4 plant owned by Bumble Bee in California.

5       31. Further, in 2014, TUF announced that it was seeking to acquire  
6 Bumble Bee, to complement its Chicken of the Sea brand. The merger appears to  
7 have been called off, but the two firms likely shared pricing and other collusive  
8 information.

9           32. In July 2015, both TUF and Bumble Bee announced that they had  
10 received subpoenas from the United States Department of Justice (“DOJ”)  
11 regarding potential antitrust violations in the PSP sector.

## ANTITRUST IMPACT AND INJURY

13           33. Defendants' unlawful agreement and conspiracy has had the  
14 following effects, among others:

- a. Restraining or eliminating price competition with respect to PSPs;
- b. Raising, fixing, stabilizing and maintaining prices for PSPs at artificially inflated levels; and
- c. Depriving indirect purchasers of PSPs of the benefits of the interplay of free and unrestrained competitive forces.

21           34. During the Class Period, Plaintiffs and the members of the Class  
22 paid supra-competitive prices for PSPs.

23       35. Because of the alleged violations of the antitrust laws, Plaintiffs and  
24 the members of the Class have sustained injury to their businesses or property,  
25 having paid higher prices for PSPs than they would have paid absent the  
26 Defendants' illegal contract, combination or conspiracy, and, as a result, have  
27 suffered damages in an amount presently undetermined. This is an antitrust  
28 injury of the type that the antitrust laws were meant to punish and prevent.

## **CLASS ALLEGATIONS**

36. Plaintiffs bring this action pursuant to Rules 23(a), (b)(2) and (b)(3) of the Federal Rules of Civil Procedure on behalf of a class of plaintiffs (the “Nationwide Class” or “Class”) consisting of:

All persons or entities currently residing in the United States who, from July 2011 to the present, (the “Class Period”) indirectly purchased packaged seafood products within the United States, its territories and the District of Columbia packaged by any of the Defendants, their subsidiaries, affiliates, or joint-venturers for end use and not for resale. Excluded from the Class are: Defendants; the officers, directors or employees of any Defendant; the parent companies, subsidiaries and affiliates of any Defendant; the legal representatives and heirs or assigns of any Defendants; and any co-conspirators. Also excluded are any federal entities, any judicial officer presiding over this action, and the members of his or her own immediate family and judicial staff, and any juror assigned to this action.

37. Plaintiffs also bring this action on their own behalf and as a class action pursuant to Rule 23 of the Federal Rules of Civil Procedure and/or respective state statute(s), on behalf of all members of the following classes (collectively, the “Indirect Purchaser State Subclasses” of “State Subclasses”):<sup>3</sup>

a. **Arizona:** All persons and entities who, from July 2011 through present, as residents of Arizona, indirectly purchased PSPs manufactured by any of the Defendants, their subsidiaries, affiliates, or joint-venturers for end use and not for resale. Excluded from the Class are: Defendants; the officers, directors or employees of any Defendant; the parent companies, subsidiaries and affiliates of any Defendant; the legal representatives and heirs or assigns of any Defendants; and any co-conspirators. Also excluded are any federal, state or local governmental entities, any judicial officer presiding over this action and the members of his/her immediate family and judicial staff, and any juror assigned to this action (the “Arizona Indirect Purchaser Subclass”).

b. **California:** All persons and entities who, from July 2011 through present, as residents of California, indirectly purchased PSPs

<sup>3</sup> The National Class and the State Subclass shall be referred to collectively as the “Classes.”

manufactured by any of the Defendants, their subsidiaries, affiliates, or joint-venturers for end use and not for resale. Excluded from the Class are: Defendants; the officers, directors or employees of any Defendant; the parent companies, subsidiaries and affiliates of any Defendant; the legal representatives and heirs or assigns of any Defendants; and any co-conspirators. Also excluded are any federal, state or local governmental entities, any judicial officer presiding over this action and the members of his/her immediate family and judicial staff, and any juror assigned to this action (the “California Indirect Purchaser Subclass”).

c. **District of Columbia:** All persons and entities who, from July 2011 through present, as residents of the District of Columbia, indirectly purchased PSPs manufactured by any of the Defendants, their subsidiaries, affiliates, or joint-venturers for end use and not for resale. Excluded from the Class are: Defendants; the officers, directors or employees of any Defendant; the parent companies, subsidiaries and affiliates of any Defendant; the legal representatives and heirs or assigns of any Defendants; and any co-conspirators. Also excluded are any federal, state or local governmental entities, any judicial officer presiding over this action and the members of his/her immediate family and judicial staff, and any juror assigned to this action (the “District of Columbia Indirect Purchaser Subclass”).

d. **Florida:** All persons and entities who, from July 2011 through present, as residents of Florida, indirectly purchased PSPs manufactured by any of the Defendants, their subsidiaries, affiliates, or joint-venturers for end use and not for resale. Excluded from the Class are: Defendants; the officers, directors or employees of any Defendant; the parent companies, subsidiaries and affiliates of any Defendant; the legal representatives and heirs or assigns of any Defendants; and any co-conspirators. Also excluded are any federal, state or local governmental entities, any judicial officer presiding over this action and the members of his/her immediate family and judicial staff, and any juror assigned to this action (the “Florida Indirect Purchaser Subclass”).

e. **Hawaii:** All persons and entities who, from July 2011 through present, as residents of Hawaii, indirectly purchased PSPs manufactured by any of the Defendants, their subsidiaries, affiliates, or joint-venturers for end use and not for resale. Excluded from the Class are: Defendants; the officers, directors or employees of any Defendant; the parent companies, subsidiaries and affiliates of any Defendant; the legal representatives and heirs or assigns of any Defendants; and any co-

1 conspirators. Also excluded are any federal, state or local governmental  
2 entities, any judicial officer presiding over this action and the members of  
3 his/her immediate family and judicial staff, and any juror assigned to this  
4 action (the "Hawaii Indirect Purchaser Subclass").

5 f. **Illinois:** All persons and entities who, from July 2011 through  
6 present, as residents of Illinois, indirectly purchased PSPs manufactured  
7 by any of the Defendants, their subsidiaries, affiliates, or joint-venturers  
8 for end use and not for resale. Excluded from the Class are: Defendants;  
9 the officers, directors or employees of any Defendant; the parent  
10 companies, subsidiaries and affiliates of any Defendant; the legal  
11 representatives and heirs or assigns of any Defendants; and any co-  
12 conspirators. Also excluded are any federal, state or local governmental  
13 entities, any judicial officer presiding over this action and the members of  
14 his/her immediate family and judicial staff, and any juror assigned to this  
15 action (the "Illinois Indirect Purchaser Subclass").

16 g. **Iowa:** All persons and entities who, from July 2011 through  
17 present, as residents of Iowa, indirectly purchased PSPs manufactured by  
18 any of the Defendants, their subsidiaries, affiliates, or joint-venturers for  
19 end use and not for resale. Excluded from the Class are: Defendants; the  
20 officers, directors or employees of any Defendant; the parent companies,  
21 subsidiaries and affiliates of any Defendant; the legal representatives and  
22 heirs or assigns of any Defendants; and any co-conspirators. Also  
23 excluded are any federal, state or local governmental entities, any judicial  
24 officer presiding over this action and the members of his/her immediate  
25 family and judicial staff, and any juror assigned to this action (the "Iowa  
26 Indirect Purchaser Subclass").

27 h. **Kansas:** All persons and entities who, from July 2011 through  
28 present, as residents of Kansas, indirectly purchased PSPs manufactured  
2 by any of the Defendants, their subsidiaries, affiliates, or joint-venturers  
3 for end use and not for resale. Excluded from the Class are: Defendants;  
4 the officers, directors or employees of any Defendant; the parent  
5 companies, subsidiaries and affiliates of any Defendant; the legal  
6 representatives and heirs or assigns of any Defendants; and any co-  
7 conspirators. Also excluded are any federal, state or local governmental  
8 entities, any judicial officer presiding over this action and the members of  
9 his/her immediate family and judicial staff, and any juror assigned to this  
10 action (the "Kansas Indirect Purchaser Subclass").

i. **Maine:** All persons and entities who, from July 2011 through present, as residents of Maine, indirectly purchased PSPs manufactured by any of the Defendants, their subsidiaries, affiliates, or joint-venturers for end use and not for resale. Excluded from the Class are: Defendants; the officers, directors or employees of any Defendant; the parent companies, subsidiaries and affiliates of any Defendant; the legal representatives and heirs or assigns of any Defendants; and any co-conspirators. Also excluded are any federal, state or local governmental entities, any judicial officer presiding over this action and the members of his/her immediate family and judicial staff, and any juror assigned to this action (the “Maine Indirect Purchaser Subclass”).

j. **Massachusetts:** All persons and entities who, from July 2011 through present, as residents of Massachusetts, indirectly purchased PSPs manufactured by any of the Defendants, their subsidiaries, affiliates, or joint-venturers for end use and not for resale. Excluded from the Class are: Defendants; the officers, directors or employees of any Defendant; the parent companies, subsidiaries and affiliates of any Defendant; the legal representatives and heirs or assigns of any Defendants; and any co-conspirators. Also excluded are any federal, state or local governmental entities, any judicial officer presiding over this action and the members of his/her immediate family and judicial staff, and any juror assigned to this action (the “Massachusetts Indirect Purchaser Subclass”).

k. **Michigan:** All persons and entities who, from July 2011 through present, as residents of Michigan, indirectly purchased PSPs manufactured by any of the Defendants, their subsidiaries, affiliates, or joint-venturers for end use and not for resale. Excluded from the Class are: Defendants; the officers, directors or employees of any Defendant; the parent companies, subsidiaries and affiliates of any Defendant; the legal representatives and heirs or assigns of any Defendants; and any co-conspirators. Also excluded are any federal, state or local governmental entities, any judicial officer presiding over this action and the members of his/her immediate family and judicial staff, and any juror assigned to this action (the “Michigan Indirect Purchaser Subclass”).

1. **Minnesota:** All persons and entities who, from July 2011 through present, as residents of Minnesota, indirectly purchased PSPs manufactured by any of the Defendants, their subsidiaries, affiliates, or joint-venturers for end use and not for resale. Excluded from the Class are: Defendants; the officers, directors or employees of any Defendant; the parent companies, subsidiaries and affiliates of any Defendant; the

1 legal representatives and heirs or assigns of any Defendants; and any co-  
2 conspirators. Also excluded are any federal, state or local governmental  
3 entities, any judicial officer presiding over this action and the members of  
4 his/her immediate family and judicial staff, and any juror assigned to this  
action (the "Minnesota Indirect Purchaser Subclass").

5 **m. Mississippi:** All persons and entities who, from July 2011 through  
6 present, as residents of Mississippi purchased PSPs manufactured by any  
7 of the Defendants, their subsidiaries, affiliates, or joint-venturers for end  
8 use and not for resale. Excluded from the Class are: Defendants; the  
9 officers, directors or employees of any Defendant; the parent companies,  
10 subsidiaries and affiliates of any Defendant; the legal representatives and  
11 heirs or assigns of any Defendants; and any co-conspirators. Also  
12 excluded are any federal, state or local governmental entities, any judicial  
13 officer presiding over this action and the members of his/her immediate  
14 family and judicial staff, and any juror assigned to this action (the  
15 "Mississippi Indirect Purchaser Subclass").

16 **n. Nebraska:** All persons and entities who, from July 2011 through  
17 present, as residents of Nebraska, indirectly purchased PSPs manufactured  
18 by any of the Defendants, their subsidiaries, affiliates, or joint-venturers  
19 for end use and not for resale. Excluded from the Class are: Defendants;  
20 the officers, directors or employees of any Defendant; the parent  
21 companies, subsidiaries and affiliates of any Defendant; the legal  
22 representatives and heirs or assigns of any Defendants; and any co-  
23 conspirators. Also excluded are any federal, state or local governmental  
24 entities, any judicial officer presiding over this action and the members of  
25 his/her immediate family and judicial staff, and any juror assigned to this  
26 action (the "Nebraska Indirect Purchaser Subclass").

27 **o. Nevada:** All persons and entities who, from July 2011 through  
28 present, as residents of Nevada, indirectly purchased PSPs manufactured  
by any of the Defendants, their subsidiaries, affiliates, or joint-venturers  
for end use and not for resale. Excluded from the Class are: Defendants;  
the officers, directors or employees of any Defendant; the parent  
companies, subsidiaries and affiliates of any Defendant; the legal  
representatives and heirs or assigns of any Defendants; and any co-  
conspirators. Also excluded are any federal, state or local governmental  
entities, any judicial officer presiding over this action and the members of  
his/her immediate family and judicial staff, and any juror assigned to this  
action (the "Nevada Indirect Purchaser Subclass").

1       p.    **New Hampshire:** All persons and entities who, from July 2011  
2       through present, as residents of New Hampshire, indirectly purchased  
3       PSPs manufactured by any of the Defendants, their subsidiaries, affiliates,  
4       or joint-venturers for end use and not for resale. Excluded from the Class  
5       are: Defendants; the officers, directors or employees of any Defendant;  
6       the parent companies, subsidiaries and affiliates of any Defendant; the  
7       legal representatives and heirs or assigns of any Defendants; and any co-  
8       conspirators. Also excluded are any federal, state or local governmental  
9       entities, any judicial officer presiding over this action and the members of  
10       his/her immediate family and judicial staff, and any juror assigned to this  
11       action (the “New Hampshire Indirect Purchaser Subclass”).

12       q.    **New Mexico:** All persons and entities who, from July 2011 through  
13       present, as residents of New Mexico, indirectly purchased PSPs  
14       manufactured by any of the Defendants, their subsidiaries, affiliates, or  
15       joint-venturers for end use and not for resale. Excluded from the Class  
16       are: Defendants; the officers, directors or employees of any Defendant;  
17       the parent companies, subsidiaries and affiliates of any Defendant; the  
18       legal representatives and heirs or assigns of any Defendants; and any co-  
19       conspirators. Also excluded are any federal, state or local governmental  
20       entities, any judicial officer presiding over this action and the members of  
21       his/her immediate family and judicial staff, and any juror assigned to this  
22       action (the “New Mexico Indirect Purchaser Subclass”).

23       r.    **New York:** All persons and entities who, from July 2011 through  
24       present, as residents of New York, indirectly purchased PSPs  
25       manufactured by any of the Defendants, their subsidiaries, affiliates, or  
26       joint-venturers for end use and not for resale. Excluded from the Class  
27       are: Defendants; the officers, directors or employees of any Defendant;  
28       the parent companies, subsidiaries and affiliates of any Defendant; the  
      legal representatives and heirs or assigns of any Defendants; and any co-  
      conspirators. Also excluded are any federal, state or local governmental  
      entities, any judicial officer presiding over this action and the members of  
      his/her immediate family and judicial staff, and any juror assigned to this  
      action (the “New York Indirect Purchaser Subclass”).

29       s.    **North Carolina:** All persons and entities who, from July 2011  
30       through present, as residents of North Carolina, indirectly purchased PSPs  
31       manufactured by any of the Defendants, their subsidiaries, affiliates, or  
32       joint-venturers for end use and not for resale. Excluded from the Class  
33       are: Defendants; the officers, directors or employees of any Defendant;  
34       the parent companies, subsidiaries and affiliates of any Defendant; the  
      legal representatives and heirs or assigns of any Defendants; and any co-  
      conspirators. Also excluded are any federal, state or local governmental  
      entities, any judicial officer presiding over this action and the members of  
      his/her immediate family and judicial staff, and any juror assigned to this  
      action (the “North Carolina Indirect Purchaser Subclass”).

1 legal representatives and heirs or assigns of any Defendants; and any co-  
2 conspirators. Also excluded are any federal, state or local governmental  
3 entities, any judicial officer presiding over this action and the members of  
4 his/her immediate family and judicial staff, and any juror assigned to this  
5 action (the "North Carolina Indirect Purchaser Subclass").

6 t. **North Dakota:** All persons and entities who, from July 2011  
7 through present, as residents of North Dakota, indirectly purchased PSPs  
8 manufactured by any of the Defendants, their subsidiaries, affiliates, or  
9 joint-venturers for end use and not for resale. Excluded from the Class  
10 are: Defendants; the officers, directors or employees of any Defendant;  
11 the parent companies, subsidiaries and affiliates of any Defendant; the  
12 legal representatives and heirs or assigns of any Defendants; and any co-  
13 conspirators. Also excluded are any federal, state or local governmental  
14 entities, any judicial officer presiding over this action and the members of  
15 his/her immediate family and judicial staff, and any juror assigned to this  
16 action (the "North Dakota Indirect Purchaser Subclass").

17 u. **Puerto Rico:** All persons and entities who, from July 2011 through  
18 present, as residents of Puerto Rico, indirectly purchased PSPs  
19 manufactured by any of the Defendants, their subsidiaries, affiliates, or  
20 joint-venturers for end use and not for resale. Excluded from the Class  
21 are: Defendants; the officers, directors or employees of any Defendant;  
22 the parent companies, subsidiaries and affiliates of any Defendant; the  
23 legal representatives and heirs or assigns of any Defendants; and any co-  
24 conspirators. Also excluded are any federal, state or local governmental  
25 entities, any judicial officer presiding over this action and the members of  
26 his/her immediate family and judicial staff, and any juror assigned to this  
27 action (the "Puerto Rico Indirect Purchaser Subclass").

28 v. **South Dakota:** All persons and entities who, from July 2011  
through present, as residents of South Dakota, indirectly purchased PSPs  
manufactured by any of the Defendants, their subsidiaries, affiliates, or  
joint-venturers for end use and not for resale. Excluded from the Class  
are: Defendants; the officers, directors or employees of any Defendant;  
the parent companies, subsidiaries and affiliates of any Defendant; the  
legal representatives and heirs or assigns of any Defendants; and any co-  
conspirators. Also excluded are any federal, state or local governmental  
entities, any judicial officer presiding over this action and the members of  
his/her immediate family and judicial staff, and any juror assigned to this  
action (the "South Dakota Indirect Purchaser Subclass").

w. **Tennessee:** All persons and entities who, from July 2011 through present, as residents of Tennessee, indirectly purchased PSPs manufactured by any of the Defendants, their subsidiaries, affiliates, or joint-venturers for end use and not for resale. Excluded from the Class are: Defendants; the officers, directors or employees of any Defendant; the parent companies, subsidiaries and affiliates of any Defendant; the legal representatives and heirs or assigns of any Defendants; and any co-conspirators. Also excluded are any federal, state or local governmental entities, any judicial officer presiding over this action and the members of his/her immediate family and judicial staff, and any juror assigned to this action (the “Tennessee Indirect Purchaser Subclass”).

x. **Utah:** All persons and entities who, from July 2011 through present, as residents of Utah, indirectly purchased PSPs manufactured by any of the Defendants, their subsidiaries, affiliates, or joint-venturers for end use and not for resale. Excluded from the Class are: Defendants; the officers, directors or employees of any Defendant; the parent companies, subsidiaries and affiliates of any Defendant; the legal representatives and heirs or assigns of any Defendants; and any co-conspirators. Also excluded are any federal, state or local governmental entities, any judicial officer presiding over this action and the members of his/her immediate family and judicial staff, and any juror assigned to this action (the “Utah Indirect Purchaser Subclass”).

y. **Vermont:** All persons and entities who, from July 2011 through present, as residents of Vermont, indirectly purchased PSPs manufactured by any of the Defendants, their subsidiaries, affiliates, or joint-venturers for end use and not for resale. Excluded from the Class are: Defendants; the officers, directors or employees of any Defendant; the parent companies, subsidiaries and affiliates of any Defendant; the legal representatives and heirs or assigns of any Defendants; and any co-conspirators. Also excluded are any federal, state or local governmental entities, any judicial officer presiding over this action and the members of his/her immediate family and judicial staff, and any juror assigned to this action (the “Vermont Indirect Purchaser Subclass”).

z. **West Virginia:** All persons and entities who, from July 2011 through present, as residents of West Virginia, indirectly purchased PSPs manufactured by any of the Defendants, their subsidiaries, affiliates, or joint-venturers for end use and not for resale. Excluded from the Class are: Defendants; the officers, directors or employees of any Defendant; the parent companies, subsidiaries and affiliates of any Defendant; the

1 legal representatives and heirs or assigns of any Defendants; and any co-  
2 conspirators. Also excluded are any federal, state or local governmental  
3 entities, any judicial officer presiding over this action and the members of  
4 his/her immediate family and judicial staff, and any juror assigned to this  
action (the “West Virginia Indirect Purchaser Subclass”).

5 aa. **Wisconsin:** All persons and entities who, from July 2011 through  
6 present, as residents of Wisconsin, indirectly purchased PSPs  
manufactured by any of the Defendants, their subsidiaries, affiliates, or  
7 joint-venturers for end use and not for resale. Excluded from the Class  
are: Defendants; the officers, directors or employees of any Defendant;  
8 the parent companies, subsidiaries and affiliates of any Defendant; the  
legal representatives and heirs or assigns of any Defendants; and any co-  
conspirators. Also excluded are any federal, state or local governmental  
entities, any judicial officer presiding over this action and the members of  
his/her immediate family and judicial staff, and any juror assigned to this  
action (the “Wisconsin Indirect Purchaser Subclass”).

13 38. Subject to additional information obtained through further  
14 investigation and discovery, the foregoing Class definitions may be expanded or  
15 narrowed by amendment or amended complaint.

16 39. **Numerosity:** For each of the Classes, membership is so numerous  
17 that joinder of all members is impracticable. On information and belief, each  
18 class consists of thousands of individuals and entities who purchased PSPs  
19 packaged by Defendants during the Class Period, and the membership of the  
20 Classes extends into the hundreds of thousands.

21 40. **Typicality:** Plaintiffs’ claims are typical of the claims of the  
22 members of the Class and State Subclass because each Plaintiff and all Class and  
23 State Subclass members indirectly purchased during the Class Period PSPs  
24 packaged by one or more of the Defendants and thus each were damaged by the  
25 actions of Defendants, which caused them to pay artificially inflated prices for  
26 PSPs.

27       ///

28       ///

1       41. **Adequacy of Plaintiffs and their Counsel:** Plaintiffs will fairly  
2 and adequately represent and protect the interests of the Class and State Subclass  
3 members. Plaintiffs' interests are coincident with, and not antagonistic to, those  
4 of the other Class and State Subclass members. Plaintiffs are represented by  
5 counsel experienced and respected in the prosecution of class action and antitrust  
6 litigation.

7       42. **Common Questions:** This case presents many common questions  
8 of law and fact that will predominate over any questions that may affect  
9 individual members of the Class and State Subclasses, such as:

- 10       a. Whether the Defendants formed and operated an agreement,  
11            combination, and/or conspiracy to raise, fix, maintain and/or  
12            stabilize the prices charged for PSPs sold in the United States;
- 13       b. The operative time period and extent of these arrangements;
- 14       c. Whether each Defendant was a participant in any such  
15            agreement, combination, or conspiracy;
- 16       d. Whether the actions of Defendants in so doing violated  
17            Section 1 of the Sherman Act and the applicable state laws, as  
18            discussed below;
- 19       e. Whether the actions of the Defendants violated the various  
20            state laws asserted below;
- 21       f. Whether the Defendants' conduct had the effect of artificially  
22            fixing, stabilizing, maintaining and/or inflating the price of  
23            PSPs sold in the United States during the Class Period;
- 24       g. Whether the conduct of the Defendants caused injury to  
25            business or property of Plaintiffs and the members of the  
26            Classes;
- 27       h. The appropriate nature of Classwide equitable relief; and

- i. The measure and amount of damages incurred by the State  
Subclasses.

3       43. **Superiority:** A class action is superior to the other available means  
4 of fair and efficient adjudication of the claims of Plaintiffs and the members of  
5 the Classes. The injury suffered by each individual member of the Classes is  
6 relatively small in comparison to the burden and expense of individual  
7 prosecution of the complex and extensive litigation necessitated by Defendants'  
8 misconduct. It would be virtually impossible for individual members of the  
9 Classes to redress effectively the wrongs done to them. Even if members of the  
10 Classes could afford such individual litigation, the court system could not.  
11 Individual litigation would pose a likelihood of inconsistent and contradictory  
12 judgments. Further, individualized litigation would increase the delay and  
13 expense to all parties, and to the court system, due to the complex legal and  
14 factual issues presented by this dispute. By contrast, the class action device  
15 presents far fewer management difficulties and provides the benefits of a single  
16 adjudication, economies of scale, and comprehensive supervision by a single  
17 court. This action presents no difficulties in management that would preclude its  
18 maintenance as a class action.

## CLAIMS FOR RELIEF

## FIRST CLAIM FOR RELIEF

## **Violation of Section One of the Sherman Act**

**(On behalf of Plaintiffs and the Nationwide Class for Injunctive Relief)**

23 44. Plaintiffs incorporate and re-allege each allegation set forth in the  
24 preceding paragraphs of this Complaint as if set forth in full at this point.

25        45. Beginning at least as early as 2000 and continuing through the  
26 present, Defendants have engaged in a continuing agreement or conspiracy in  
27 restraint of trade to artificially raise, fix, maintain, and/or stabilize the prices of  
28 PSPs in the United States.

1       46. Defendants' conduct featured anticompetitive activities, the purpose  
2 and effect of which were to artificially raise, fix, maintain, or stabilize the price  
3 of PSPs sold in the United States. These activities included:

4           a. participation in meetings, conversations, and communications  
5           to discuss the price and pricing terms for the sale of PSPs in  
6           the United States;

7           b. agreement during those meetings, conversations, and  
8           communications to charge prices at specified levels and  
9           otherwise to fix, raise, maintain, or stabilize prices of PSPs  
10           sold in the United States; and

11           c. taking numerous steps, as set forth herein, to implement and  
12           maintain the conspiracy, including monitoring compliance of  
13           fellow conspirators.

14       47. Defendants and their co-conspirators engaged in the activities  
15 described above for the purpose of effectuating the unlawful agreements,  
16 combinations, and/or conspiracies described in this Complaint.

17       48. Defendants' contract, combination or conspiracy constitutes an  
18 unreasonable restraint of interstate trade and commerce in violation of Section 1  
19 of the Sherman Act, 15 U.S.C. § 1, and applicable state laws discussed herein.

20       49. The alleged contract, combination or conspiracy among competitors  
21 constitutes a *per se* violation of the federal antitrust laws.

22       50. As a result of Defendants' unlawful conduct, Plaintiffs and the other  
23 Class members have been injured in their business and property because they  
24 have paid more for PSPs packaged by Defendants (or their subsidiaries or  
25 controlled affiliates) than they would have paid absent collusion.

26       51. Defendants' unlawful conduct has had at least the following effects:  
27           a. Restraining or eliminating price competition with respect to  
28           PSPs;

- b. Raising, fixing, stabilizing and maintaining prices for PSPs at artificially inflated levels; and
- c. Depriving indirect purchasers of PSPs of the benefits of the interplay of free and unrestrained competitive forces.

5        52. PSPs are identifiable, discrete physical products that remain  
6 unchanged from the moment they are packaged until they reach the supermarket  
7 shelves. As a result, PSPs follow a traceable physical chain of distribution from  
8 the Defendants to the Plaintiffs and the members of the Classes, and any costs  
9 attributable to PSPs are likewise traceable through the chain of distribution to  
10 Plaintiffs and members of the Classes.

11       53. Defendants' antitrust violations are continuing and will continue  
12 unless enjoined by this Court.

13        54. Pursuant to Section 16 of the Clayton Act, 15 U.S.C. § 26, Plaintiffs  
14 and the Class are entitled to a final and permanent injunction against Defendants,  
15 preventing and restraining the violations alleged herein.

16        55. Pursuant to the Clayton Act, Plaintiffs and the Class are entitled to  
17 the costs of prosecuting this suit, including reasonable attorneys' fees and expert  
18 fees.

19       56. Pursuant to Rule 38(b) of the Federal Rules of Civil Procedure, each  
20 Plaintiff demands a jury trial as to all issues triable by a jury.

## **SECOND CLAIM FOR RELIEF**

## **Violations of State Antitrust and Restraint of Trade Laws (On Behalf of State Subclasses)**

24 57. Plaintiffs incorporate and re-allege each allegation set forth in the  
25 preceding paragraphs of this Complaint as if set forth in full at this point.

26       58. By reason of the foregoing, the Defendants have entered into a trust,  
27 contract, combination, understanding, and agreement in restraint of trade in

1 violation of Arizona Revised Stat. § 44-1401, *et seq.*<sup>4</sup>; California Bus. & Prof.  
 2 Code § 16701, *et seq.*; District of Columbia Code Ann. § 28-4501, *et seq.*;   
 3 Florida Stat. § 501.201, *et seq.*; Hawaii Code, H.R.S. § 480-4, *et seq.*; 740 Illinois  
 4 Comp. Stat. § 10.1, *et seq.*; Iowa Code § 553.1, *et seq.*; Kansas Stat. Ann. § 50-  
 5 101, *et seq.*; Maine Rev. Stat. Ann. tit. 10, § 1101, *et seq.*; Massachusetts Gen.  
 6 Laws ch. 93A, § 1, *et seq.*; Michigan Comp. Laws. Ann. § 445.771, *et seq.*;   
 7 Minnesota Stat. § 325D.49, *et seq.*; Mississippi Code Ann. § 75-21-1, *et seq.*;   
 8 Nebraska Rev. Stat. §§ 59-801, *et seq.* and § 59-1601, *et seq.*; Nevada Rev. Stat.  
 9 Ann. § 598A, *et seq.*<sup>5</sup>; New Hampshire Revised Stat. Ann. § 356: I, *et seq.*; New  
 10 Mexico Stat. Ann. § 57-1-1, *et seq.*; New York Gen. Bus. Law § 340, *et seq.*;   
 11 North Carolina Gen. Stat. § 75-1, *et seq.*; North Dakota Cent. Code § 51-08.1-01,  
 12 *et seq.*; Puerto Rico Laws Ann. tit. 10, § 257, *et seq.*; South Dakota Codified  
 13 Laws § 37-1-3.1, *et seq.*; Tennessee Code Ann. § 47-25-101, *et seq.*; Utah Code  
 14 Ann. § 76-10-911, *et seq.*<sup>6</sup>; Vermont Stat. Ann. Title 9, § 2451, *et seq.*; West  
 15 Virginia Code § 47-18-1, *et seq.*; and Wisconsin Stat. § 133.01, *et seq.*

16       59. Members of the State Subclasses for the states listed above paid  
 17 supra-competitive, artificially inflated prices for PSPs. As a direct and proximate  
 18 result of the Defendants' unlawful conduct, Plaintiffs and the members of the  
 19 State Subclasses have been injured in their business and property in that they  
 20 paid more for PSPs than they otherwise would have paid absent the Defendants'  
 21 unlawful conduct.

22       60. As a result of the Defendants' violations of the statutes set forth  
 23 above, Plaintiffs and other members of the State Subclasses seek damages and

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24       <sup>4</sup> In compliance with Arizona's Antitrust Act, Ariz. Rev. Stat. § 44-1415,  
 25 Plaintiffs notified the Arizona Attorney General of the existence of this action.

26       <sup>5</sup> In compliance with the Nevada Unfair Trade Practices Act, Nev. Rev. Stat.  
 27 Ann. § 589A.210(3), Plaintiff provided the Nevada Attorney General with a copy  
 of this Complaint.

28       <sup>6</sup> In compliance with Utah Code Ann. § 76-10-919(9), Plaintiff notified the  
 Utah Attorney General of the existence of this action and provided a copy of the  
 Complaint.

1 costs of suit, including reasonable attorneys' fees, and all other forms of relief  
2 available under the state antitrust statutes listed above.

3 **DEMAND FOR JURY TRIAL**

4 61. Pursuant to Federal Rule of Civil Procedure 38(b), each Plaintiff  
5 demands a trial by jury of all claims asserted in this Complaint so triable.

6 **DEMAND FOR RELIEF**

7 62. Wherefore, Plaintiffs demand judgment against Defendants as  
8 follows;

9 a. Declaring this action to be a proper class action pursuant to  
10 Rule 23(b)(3) of the Federal Rules of Civil Procedure on behalf of the Class and  
11 State Subclasses as defined herein;

12 b. That the contract, combination, or conspiracy, and the acts  
13 done in furtherance thereof by Defendants be judged to have violated Section 1  
14 of the Sherman Act, 15 U.S.C. § 1 and applicable state laws described herein;

15 c. That judgment be entered for Plaintiffs and the Class on the  
16 first claim awarding injunctive relief;

17 d. That judgment be entered for Plaintiffs and the State Subclass  
18 members on the second claim for damages, trebled as allowed by law;

19 e. That Plaintiffs and the members of the Class and State  
20 Subclasses recover their costs of suit, including attorneys' fees and expert fees,  
21 as provided by law; and

22 f. For such other and further relief as is just and proper under  
23 the circumstances.

24 Dated: September 17, 2015

25 BLOOD HURST & O'REARDON, LLP  
26 TIMOTHY G. BLOOD (149343)  
27 THOMAS J. O'REARDON II (247952)  
28 PAULA M. ROACH (254142)

29 By: s/ Timothy G. Blood  
30 TIMOTHY G. BLOOD

701 B Street, Suite 1700  
San Diego, CA 92101  
Tel: 619/338-1100  
619/338-1101 (fax)  
tbllood@bholaw.com  
toreardon@bholaw.com  
proach@bholaw.com

MORGAN & MORGAN, P.C.  
PETER SAFIRSTEIN  
ROGER SACHAR  
28 W. 44th Street, Suite 2001  
New York, NY 10036  
Tel: 212/564-1637  
212/564-1807 (fax)  
PSafirstein@MorganSecuritiesLaw.com  
RSachar@MorganSecuritiesLaw.com

*Attorneys for Plaintiffs and the Class*

BLOOD HURST & O'REARDON, LLP